IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22932 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AS CORPORATION & 3 - Petitioner(s)

Versus

UNION OF INDIA & 2 - Respondent(s)

==========

Appearance :

MR MANISH R BHATT for Petitioner(s) : 1 - 4.

MR JITENDRA MALKAN for Respondent(s) : 1,

NOTICE SERVED BY DS for Respondent(s) : 2 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 23/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1 Mr.M.R.Bhatt, learned Advocate appearing on behalf of the petitioners seeks permission to amend page No.1 of the petition. Permission granted.

2 This petition under Article 226 of the Constitution of India makes following prayers :

> "[a] this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the summons issued by the respondent no.3 under the purported exercise of powers u/s.14 of the Central Excise Act,1944;
>
> [b]this Hon'ble Court be pleased to hold and declare that the action initiated by the respondent no.3 is bad

in law and hence deserves to be quashed and set aside;

[c] that pending admission, hearing and final disposal of this petition, this Hon'ble Court may be pleased to restrain the respondents from directing the petitioners to appear in person in the purported exercise of powers u/s.14 of the Central Excise Act,1944;

[d] that pending admission, hearing and final disposal of this petition, this Hon'ble Court may be pleased to direct the respondents to furnish certified copies of the seized documents/records as also the statements of the petitioners recorded from time to time;

[e] Be pleased to pass such other and further orders, as may deem just and proper in the facts and circumstances of the case;”

3 Upon issuance of notice, on 9.12.2005 the respondent put in their appearance through their Counsel and respondent No.3 was personally present before the Court. After hearing the

parties, respondent No.3 was directed to place on affidavit the details of the documents/accounts seized under Panchnama dated 21/9/2004 and after personal verification, state as to what are the documents available with the respondent department in the seized material which tally with the aforesaid seizure Panchnama. In response to the aforesaid direction respondent No.3 has tendered supplemental affidavit dated 15/12/2005.

4 It became necessary to issue the aforesaid directions on 9/12/2005 in light of the submissions made on behalf of the respondent at the time of hearing on the said day. The case of the respondent authority is that one Sulekhram Steel Pvt.Ltd., a manufacturer of certain excisable goods has been clearing the goods without payment of requisite duty under the provisions of Central Excise Act,1944. As the petitioner firm is one of the purchasers of such

manufactured goods as per record of the said Limited Company, the place and residential premises of the petitioner and its partners were searched on 21/9/2004. At the end of the said proceedings Books of Account and other records were seized under Panchnama dated 21/9/2004. Admittedly, the petitioner is merely a trader and is not amenable to the provisions of Excise Act directly.

5 In connection with the inquiry/investigation being carried on in case of Sulekhram Steel Private Limited, the petitioner through its partners was issued summons dated 4/10/2004 wherein the subject matter was stated “TO GIVE STATEMENT AS EVIDENCE AND PRODUCE DOCUMENTS RELATING TO SALES, PURCHASE and RECEIPT AND PAYMENT PARTICULARS”. This was followed by summons dated 15/10/2004 with same subject matter. In the third summons dated 21/10/2004, the subject matter remained the same but the

following words came to be added “for the period from 2002-2003 to 2004-2005”.

6 The summons came to be repeated on 2/11/2004, 10/11/2004 and 3/12/2004. The summons dated 3/12/2004 was served on three partners.

7 Being at their wit's end, the partners of the petitioner firm approached the Chief Commissioner of Central Excise on 13/12/2004, wherein the subject matter mentioned was “Maltreatment & torture to the partners of A.S.Corporation, a trading firm, not registered with the Central Excise Department”. It is not necessary to enter into the narration made in the said submission. Suffice it to state that the petitioner has categorically complained of being ill treated by respondent No.3 by name.

8 There was no improvement in the situation. On 23/12/2004 once again a summons came to be issued

wherein apart from the subject matter which was stated in the earlier summons there was addition to the effect “Income-tax and Sales-tax returns for the years 2002-03, 2003-04 and 2004-05”. The same summons came to be repeated on 31/12/2004. It appears that thereafter there was lull for some time and again on 20/10/2005 a summons came to be issued to two partners of the firm calling for virtually the same details except for addition of “trip particulars of truck No.GJ 8U 1613”.

9 It is in the aforesaid backdrop of facts and circumstances that the petitioner has moved this Court, and the Court called upon respondent No.3 to file additional affidavit, considering the submissions made on behalf of the petitioner that all the details that respondent No.3 was calling for by repeatedly issuing summons was already in possession of the department.

10 The additional affidavit dated 15/12/2005 in

paragraph No.2 states as under :

“ 2. On personal verification, I state as under :

Details of the documents/accounts seized under panchnama dated 21.09.2005	Details of the documents available with the respondent Department in the seized material which tally with the seizure panchnama.
1.One Sales Book (Index & Page No.1 to 189)	The said document is a red coloured diary containing partiwise details of sales bills and payment particulars thereof for the period from 01.04.2002 to 20.09.2004.
2. One Purchase Book (Index & Page No. 1 to 189).	The said document is a red coloured diary containing partywise details of purchases and payment particulars thereof for the period from 01.04.2002 to 20.09.2004.
3. One Bank Pass Book (From date 30.03.2002 to 21.09.2004).	The said bank pass book pertains to transactions related to Dena Bank account No.14852 of Relief Road Branch.
4. One T.C.file (Box file) (Page No. 1 to 555).	The said file contains Xerox copies & original Test Certificates issued by different suppliers.
5. One Misc.file (Box file) (Page No.1 to 661)	The said file contains the correspondence with the buyers regarding payment of the DD/Cheque.

Details of the documents/accounts seized under panchnama dated 21.09.2005	Details of the documents available with the respondent Department in the seized material which tally with the seizure panchnama.
6 One Sales Bill Box file alongwith computer ledger of sales register for the month of April to July 2004 (Bill No. 1 dtd.01.04.2004 to 108 dtd.20.09.2004).	The said file contains the sales bills and delivery challans of M/s.A.S.Corporation, for the period 01.04.2004 to 20.09.2004 and computer ledger of sales register for the month of April to July 2004.
7. One Purchase Bill Box file (Page No.1 to 477).	File contains the purchase bills of M/s.A.S.Corporation for the period 01.04.2004 to 20.09.2004.

11. On going through the said affidavit the learned Counsel for the respondent authority was called upon to explain as to what was the purpose of issuing summons by calling for details which were already in possession of the respondent department as accepted in the affidavit. The submission was that the seized documents/Accounts referred to 'red coloured diary' and the same cannot take place of Books of Accounts. The Court called upon the learned Counsel to explain what was the perception of the

respondent when it was submitted that these were not “Books of Account”. The Counsel is not in a position to explain to the Court.

12 On going through the aforesaid details it is apparent that the seized documents/Accounts contain one Sales Book containing index and page Nos. 1 to 189 for the period 1.4.2002 to 20.9.2004, i.e. a day prior to search and seizure action. Similar is the position in relation to Purchase Book, Bank Pass Book, Box file, Misc. File, Sales Bill Box Files, etc. Thus, it is apparent that each and every detail which was called for by way of summons already exists with the respondent department, it having seized the same under seizure panchnama dated 21/9/2004. The petitioner could not have produced anything more, not being in possession of anything else. It is not even the case of the respondent that they are in possession of any information which would go

to show that the petitioner has withheld any books or documents which are relevant and material. The Court has failed to appreciate the contention raised on behalf of the respondent authority that these are not Books of Account. The only thing which can be stated in the context of this submission is that the respondent department, with special reference to respondent No.3, is bereft of basic knowledge of Accountancy and Book keeping. There is no prescription as to the kind of Books of Accounts to be maintained, at least none has been pointed out to the Court inspite of repeated queries.

13 In the aforesaid backdrop of facts and circumstances of the case, it is apparent that the entire exercise commencing from issuance of the first summons dated 4/10/2004 is either only with a purpose to create record of having made an inquiry, or for some other collateral purpose,

which need not be spelt out at this juncture. Whatsoever may be the reason, the end result is sheer harassment and mal treatment to the partners of the petitioner firm at the hands of respondent No.3. Even if one accepts that the same is as a consequence of lack of knowledge of respondent No.3, once the relevant details containing the entries of sales and purchase right from 1.4.2002 till the day prior to the seizure of the books was available with the Department nothing further was required from the petitioner or its partners, and whatever exercise had to be carried out had to be done by respondent No.3 on his own by analysis and reading of the books. In any eventuality regardless of the reason, the entire exercise amounts to abuse of the powers vested in respondent No.3 and due process of law and the action in question, hence, cannot be sustained.

14 The petitioner shall not be issued any further summons in relation to the same subject matter, unless and until the respondent department is in possession of any specific evidence requiring the presence of the partners of the petitioner firm after coming across such evidence pursuant to inquiries/investigations in case of Sulekhram Steel Pvt.Ltd.

15 In the result, the petition is allowed. Rule made absolute.

16 Considering the facts of the case, exemplary costs are required to be imposed on respondent No.3 which are quantified at a sum of Rs.10,000/-. In the first instance, the department shall pay the costs to the petitioner within a period of fortnight from today and recover the same personally from respondent No.3.

17. At this stage, Mr.Malkan makes a request to

stay the operation of this judgment. Considering the facts of the case the request is rejected.

Sd/- Sd/-
(D.A.Mehta,J) (H.N.Devani, J)

m.m.bhatt